

**SUNSHINE ORDINANCE
TASK FORCE**



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ORDER OF DETERMINATION

April 9, 2012

DATE THE DECISION ISSUED

December 14, 2011

LIBRARY USERS ASSOCIATION v ARTS COMMISSION (CASE NO. 11085)

FACTS OF THE CASE

Complainant Library Users Association alleges that the San Francisco Arts Commission ("SFAC") violated the Sunshine Ordinance by failing to provide draft minutes of the Visual Arts Committee's ("VAC") August 17, 2011 meeting in response to the Library Users Association's public records request made on September 7, 2011.

COMPLAINT FILED

On October 14, 2011, Library Users Association filed a complaint with the Sunshine Ordinance Task Force ("Task Force") alleging that the SFAC violated Section 67.16 of the Sunshine Ordinance.

HEARING ON THE COMPLAINT

On December 14, 2011, Library Users Association Executive Director Peter Warfield appeared before the Task Force and presented the Library Users Association's complaint. Susan Pontious, Program Director of the Public Art and Collections Programs, appeared on behalf of the SFAC and presented its response.

Based on the Library Commission meeting held on July 21, 2011, Mr. Warfield believed that the Library Commission's Bernal Heights Branch Library mural project item would be heard by the SFAC in September 2011. He contacted the SFAC on September 7, 2011 for the specific hearing date and learned the VAC had already heard the item on August 17, 2011. When he requested an audio recording of the August 17 VAC meeting, he was informed the VAC does not record its meetings. He then requested the draft minutes of the meeting and was notified by VAC staff that office policy was to distribute only final meeting minutes, and those would be available online by September 9.

Mr. Warfield stated he believed draft minutes of the VAC meeting existed at the time of his request because he regularly attends the meetings and has seen staff taking meeting notes on the computer. He alleged the VAC violated Section 67.21(a) of the Sunshine Ordinance by refusing to allow him to inspect the draft minutes without unreasonable delay.

Ms. Pontious stated she was advised by the City Attorney's Office that only boards and commissions listed in the San Francisco City Charter ("Charter") are required to record minutes pursuant to Sunshine Ordinance Section 67.16. She alleged that the VAC is not subject to Section 67.16 because it is an advisory committee to the SFAC and not a board or commission listed in the Charter. She cited the City Attorney's Good Government Guide, Part Three, Section G(2)(c) for support.

Ms. Pontius stated that although it is not required to do so, the VAC provides minutes. She explained that when Mr. Warfield requested the minutes notes did exist but the minutes had not yet been created. Mr. Warfield did not make an Immediate Disclosure Request, and the minutes were made available online on September 9, 2011, two days after the date of his request.

Ms. Pontius further stated that a junior staff person with no experience responding to similar Sunshine requests had responded to Mr. Warfield's request. The person provided Mr. Warfield with a link to the minutes online rather than a pdf version of the document, and Ms. Pontius stated that did not mean he had been denied the document. She advised the Task Force that staff has since been instructed to provide notes with a disclaimer that draft minutes have not yet been approved by senior staff. She stated that the SFAC had provided Mr. Warfield with the requested records and responded in a timely manner.

Mr. Warfield's written reply to the VAC's response to his complaint stated that if subcommittees are not required to comply with Sunshine meeting and minutes requirements, boards and commissions would be allowed to create subcommittees for the purpose of avoiding Sunshine requirements. He stated that the Bernal Heights mural item was placed on the SFAC agenda as a consent item following its hearing at the VAC meeting.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Task Force concluded that the minutes requirements of Sunshine Ordinance Section 67.16 apply to the VAC. As a standing committee, the VAC is a part of the SFAC, a commission enumerated in the Charter. The Task Force interprets the phrase "each board and commission enumerated in the Charter" in Section 67.16 to be inclusive of all parts of those boards and commissions, including all standing committees. The Task Force concluded that standing committees, including the VAC, are not intended to stand alone as entities separated from the parent commission. Standing committees are established to make work decisions for the parent commission; they consist of voting members of the parent commission; and they have continuing subject matter jurisdiction pertinent to the parent commission's work. The Task Force concluded an interpretation that excludes standing committees from state and local public records and public meetings laws is inconsistent with the findings and purpose of the Sunshine Ordinance.

The Task Force further concluded that the VAC is a legislative body as defined by Section 54952(b) of the Brown Act and, therefore, a local agency subject to the requirements of the California Public Records Act.

Based on respondent's statements, the Task Force found that either draft minutes or notes did exist at the time of Mr. Warfield's request. The Task Force concluded the draft document, whether in minute or note form, is a public record not exempt from disclosure.

DECISION AND ORDER OF DETERMINATION

The Task Force finds the SFAC in violation of Sunshine Ordinance Sections 67.16 for failure to make draft minutes available within 10 days of the VAC's August 17, 2011 meeting, 67.21(a) for failure to allow Mr. Warfield access to the draft minutes or notes without unreasonable delay, 67.21(b) for failure to provide the requested public records as soon as possible by requiring Mr. Warfield to wait two days for minutes without producing the existing notes, 67.26 for failure to keep withholding of public records to a minimum by refusing to produce the existing notes, and 67.27 for failure to justify withholding public records.

The SFAC shall appear before the Education, Outreach and Training Committee on Thursday, May 10, 2012 at 4:00 p.m. in Room 406 at City Hall. The Committee shall discuss SFAC compliance with the Sunshine Ordinance.

This Order of Determination was adopted by the Sunshine Ordinance Task Force on December 14, 2011, by the following vote: (Knee/Costa)
Ayes: Snyder, Knee, Cauthen, Manneh, Washburn, Costa, Wolfe, West, Johnson
Absent: Chan



Hope Johnson, Chair
Sunshine Ordinance Task Force



David Snyder, Esq., Member, Seat #1*
Sunshine Ordinance Task Force

cc: Library Users Association, Complainant
Susan Pontious, Respondent
Jerry Threet, Deputy City Attorney

*Sunshine Ordinance Task Force Seat #1 is a voting seat held by an attorney specializing in sunshine law.